

## Federal Trade Commission

## § 802.42

### § 802.31 Acquisitions of convertible voting securities.

Acquisitions of convertible voting securities shall be exempt from the requirements of the act.

*Example:* This section applies regardless of the dollar value of the convertible voting securities held or to be acquired. Note, however, that subsequent conversions of convertible voting securities may be subject to the requirements of the act. See § 801.32.

[43 FR 33544, July 31, 1978, as amended at 66 FR 8694, Feb. 1, 2001]

### § 802.35 Acquisitions by employee trusts.

An acquisition of voting securities shall be exempt from the notification requirements of the act if:

(a) The securities are acquired by a trust that meets the qualifications of section 401 of the Internal Revenue Code;

(b) The trust is controlled by a person that employs the beneficiaries and,

(c) The voting securities acquired are those of that person or an entity within that person.

*Examples:* 1. Company A establishes a trust for its employees that meets the qualifications of section 401 of the Internal Revenue Code. Company A has the power to designate the trustee of the trust. That trust then acquires 30% of the voting securities of Company A for \$120 million. Later, the trust acquires 20% of the stock of Company B, a wholly-owned subsidiary of Company A, for \$58 million. Neither acquisition is reportable.

2. Assume that in the example above, "A" has total assets of \$100 million. "C" also has total assets of \$100 million and is not controlled by Company A. The trust controlled by Company A plans to acquire 40 percent of the voting securities of Company C for \$80 million. Since Company C is not included within "A," "A" must observe the requirements of the act before the trust makes the acquisition of Company C's shares.

[52 FR 7082, Mar. 6, 1987, as amended at 66 FR 8694, Feb. 1, 2001]

### § 802.40 Exempt formation of joint venture or other corporations.

Acquisitions of the voting securities of a joint venture or other corporation at the time of formation under § 801.40 shall be exempt from the requirements of the act if the joint venture or other corporation will be not for profit with-

in the meaning of sections 501(c)(1)-(4), (6)-(15), (17)-(20) or (d) of the Internal Revenue Code.

### § 802.41 Joint venture or other corporations at time of formation.

Whenever any person(s) contributing to the formation of a joint venture or other corporation are subject to the requirements of the act by reason of § 801.40, the joint venture or other corporation need not file the notification required by the act and § 803.1.

*Examples:* 1. Corporations A and B, each having sales of \$200 million, each propose to contribute \$80 million in cash in exchange for 50 percent of the voting securities of a new corporation, N. Under this section, the new corporation need not file notification, although both "A" and "B" must do so and observe the waiting period prior to receiving any voting securities of N.

2. In addition to the facts in example 1 above, A and B have agreed that upon creation N will purchase 100 percent of the voting securities of corporation C for \$55 million. Because N's purchase of C is not a transaction in connection with N's formation, and because in any event C is not a contributor to the formation of N, "A," "B" and "C" must file with respect to the proposed acquisition of C and must observe the waiting period.

[43 FR 33544, July 31, 1978, as amended at 52 FR 7082, Mar. 6, 1987; 66 FR 8694, Feb. 1, 2001]

### § 802.42 Partial exemption for acquisitions in connection with the formation of certain joint ventures or other corporations.

(a) Whenever one or more of the contributors in the formation of a joint venture or other corporation which otherwise would be subject to the requirements of the act by reason of § 801.40 are exempt from these requirements under section 7A(c)(8), any other contributor in the formation which is subject to the act and not exempt under section 7A(c)(8) need not file a Notification and Report Form, provided that no less than 30 days prior to the date of consummation any such contributor claiming this exemption has submitted an affidavit to the Federal Trade Commission and to the Assistant Attorney General stating its good faith intention to make the proposed acquisition and asserting the applicability of this exemption.

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(b) Persons relieved of the requirement to file a Notification and Report Form pursuant to paragraph (a) of this section remain subject to all other provisions of the act and these rules.

[48 FR 34436, July 29, 1983]

### § 802.50 Acquisitions of foreign assets.

(a) The acquisition of assets located outside the United States shall be exempt from the requirements of the act unless the foreign assets the acquiring person would hold as a result of the acquisition generated sales in or into the U.S. exceeding \$50 million during the acquired person's most recent fiscal year.

(b) Where the foreign assets being acquired exceed the threshold in paragraph (a) of this section, the acquisition nevertheless shall be exempt where:

(1) Both acquiring and acquired persons are foreign;

(2) The aggregate sales of the acquiring and acquired persons in or into the United States are less than \$110 million in their respective most recent fiscal years;

(3) The aggregate total assets of the acquiring and acquired persons located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) are less than \$110 million; and

(4) The transaction does not meet the criteria of Section 7A(a)(2)(A).

*Example to § 802.50:* 1. Assume that "A" and "B" are both U.S. persons. "A" proposes selling to "B" a manufacturing plant located abroad. Sales in or into the United States attributable to the plant totaled \$13 million in the most recent fiscal year. The transaction is exempt under this paragraph (a) of this section.

2. Sixty days after the transaction in example 1, "A" proposes to sell to "B" a second manufacturing plant located abroad; sales in or into the United States attributable to this plant totaled \$38 million in the most recent fiscal year. Since "B" would be acquiring the second plant within 180 days of the first plant, both plants would be considered assets of "A" held by "B" as a result of the second acquisition (see § 801.13(b)(2) of this chapter). Since the total sales in or into the United States exceed \$50 million, the acquisition of the second plant would not be

exempt under this paragraph (a) of this section.

3. Assume that "A" and "B" are foreign persons with aggregate sales in or into the United States of \$200 million. If "A" acquires only foreign assets of "B," and if those assets generated \$50 million or less in sales in or into the United States, the transaction is exempt.

4. Assume that "A" and "B" are foreign persons with aggregate sales in or into the United States and assets located in the United States of less than \$100 million. If "A" acquires only foreign assets of "B", and those assets generated in excess of \$50 million in sales in or into the United States during the most recent fiscal year, the transaction is exempt from reporting if the assets are valued at \$200 million or less, but is reportable if valued at greater than \$200 million.

[67 FR 11903, Mar. 18, 2002]

### § 802.51 Acquisitions of voting securities of a foreign issuer.

(a) *By U.S. persons.* (1) The acquisition of voting securities of a foreign issuer by a U.S. person shall be exempt from the requirements of the act unless the issuer (including all entities controlled by the issuer) either: holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) having an aggregate total value of over \$50 million; or made aggregate sales in or into the United States of over \$50 million in its most recent fiscal year.

(2) If interests in multiple foreign issuers are being acquired from the same acquired person, the assets located in the United States and sales in or into the United States of all the issuers must be aggregated to determine whether either \$50 million threshold is exceeded.

(b) *By foreign persons.* (1) The acquisition of voting securities of a foreign issuer by a foreign person shall be exempt from the requirements of the act unless the acquisition will confer control of the issuer and the issuer (including all entities controlled by the issuer) either: holds assets located in the United States (other than investment assets, voting or nonvoting securities of another person, and assets included pursuant to § 801.40(d)(2) of this chapter) having an aggregate total